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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/688,006	10/17/2003	Russell T. White JR.	END920030046US1	4391
23550 7590 12/26/2007 HOFFMAN WARNICK & D'ALESSANDRO, LLC 75 STATE STREET 14TH FLOOR ALBANY, NY 12207			EXAMINER LEVINE, ADAM L	
			ART UNIT 3625	PAPER NUMBER
			NOTIFICATION DATE 12/26/2007	DELIVERY MODE ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

PTOCommunications@hwdpatents.com

## Office Action Summary

Application No.

10/688,006

Applicant(s)

WHITE, RUSSELL T.

Examiner

Adam Levine

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 17 October 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-22 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-22 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on October 17, 2007, has been entered.

### ***Response to Amendment***

Applicant's amendments and remarks filed October 17, 2007, are responsive to the office action mailed July 17, 2007. Independent claims 1,8,14, and 19 have been amended. Claims 1-22 are currently pending and considered in this office action.

### ***Response to Arguments***

#### ***Pertaining to rejection under 35 USC §102(b) in the previous office action***

Applicant's arguments filed October 17, 2007, have been fully considered but they are not persuasive. Applicant argues that the prior art does not "indicate that database search queries that return a set of records containing the items based on a specified characteristic of the items and that dynamically generate a page based on the result of the query are used to navigate the browse tree." In response to applicant's

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argument that the references fail to show certain features of applicant's invention, it is noted that examiner does not believe the features upon which applicant relies (i.e., queries that dynamically generate a page) are intended in the rejected claim(s). This understanding is based on the rejection of claims 1,8,14, and 19 under 35 USC 112, second paragraph, in the office action mailed January 24, 2007 (see pages 6-7), and on applicant's response thereto, said response including an amendment to make clear that it is not the query that dynamically generates the page, but that the page is generated (by the system or within the methods) based on the result of the query. The current claim amendments reintroduce the previous defect to the claims and this leads to a revival of the previous 112 rejection. The examiner believes this was unintended and is therefore interpreting the claims as intending to be directed at methods and systems that dynamically generate a page based on the result of the query. It is noted that there is no enablement for a query that itself somehow generates a page.

Applicant clarifies his position with regard to the claim language by further stating that the prior art "does not indicate the use of a query that uses a characteristic of the data to return the data or indicate dynamic generation of a page anywhere in the specification." Rather than using a characteristic of the data to indicate dynamic generation of a page, this is interpreted as referring to two separate elements: using a characteristic of the data to return the data, and merely indicating the dynamic generation of a page. It should be noted that the "specified characteristic" that now appears in the claims is not described in the specification as originally filed, however, this is interpreted as the category selected by the query, which is disclosed.

It is also disclosed in the prior art (see at least Spiegel column 5 line 10-column 6 line 5. The prior art also indicates dynamic generation of a page (see at least column 2 lines 25-36, column 5 lines 3-10, column 7 lines 5-24). These passages also indicate that the dynamic generation of a page occurs based on the result of a query. For more, please see the following rejection under 35 USC §102(b). Please note that the portion cited by applicant, column 7 lines 17-19, is not distinguishing because it is not a mutually exclusive element that would preclude the presence of the relevant feature, and in addition is not representative of the subject matter in the remainder of the cited portion. It merely refers to a minor aspect of the results presented on the dynamically generated page. The page is dynamically generated based on the results of a query, and among those results appear featured items and categories. The featured items and categories are themselves represented by hyperlinks that provide a direct path to the detail page with further information on those specific items.

Regarding the automatic generation of queries, in recalling an item the query is automatically generated for each level of the hierarchical structure. This is performed by both the present invention and the prior art as the query levels of the item are recalled from storage and/or replicated recursively in order to present the new query in process while bringing the highlighted popular item to the front of a category or subcategory in which the item appropriately belongs. Spiegel refers to its hierarchical structure as a browse tree, and to query levels as nodes (which can refer to either categories or items). Spiegel describes automatically identifying nodes and calling them to attention by elevating them along child-parent paths. These paths are the

hierarchical query levels described in the present application (see at least column 1 lines 60-66, column 2 lines 25-30, 41-43). This means that the each level of the query is automatically generated and repeated.

Applicant is reminded that the examiner cites columns and line numbers in the references as applied to the claims for the convenience of the applicant. Although the specified citations are representative of the teachings in the art and are applied to the specific limitations within the claims, other passages and figures may apply as well. It is respectfully requested that, in preparing responses, the applicant fully consider the references in entirety as potentially teaching all or part of the claimed invention, as well as the context of the passage as taught by the prior art or disclosed by the examiner

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

1. **Claims 1-22 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement.** The claim(s) contains subject matter that was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The "specified characteristic" claimed in the amendments to claims 1, 8, 14, and 19, is not described in the specification and was not claimed or otherwise disclosed in the original specification.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

**2. Claims 1,8,14, and 19 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.**

Claims 1,8,14, and 19 are rejected under 35 U.S.C. 112, second paragraph, as being incomplete for omitting essential elements, such omission amounting to a gap between the elements. See MPEP § 2172.01. The omitted elements are: the operative element that "dynamically generates a page based on the result of the query."

The difficulty with the amended claim language is that it appears to be the query that dynamically generates a page. It is the examiner's understanding that this element cannot itself generate the page but rather that it would cause the page to be dynamically generated by another element and influence the form and content of the generated page. It is suggested that in the method claims, the dynamic generation of the page based on the result of the query would itself be a separate method step, rather than the current phrasing that appears to merely modify the description of the query. In the system claim the difficulty is extended to the storage system. Is it the storage system that dynamically generates the page? In the computer program product claim the difficulty is extended to the program code. Does the program code dynamically generate the page?

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. **Claims 1-22 are rejected under 35 U.S.C. 102(b) as being anticipated by Spiegel (Paper #051102; US Patent No. 6,466,918).**

Spiegel teaches all the limitations of Claims 1-22. For example, with regard to method claims 1-13, Spiegel discloses a method for storing items in a hierarchical structure, allowing users to select items within that structure, identifying frequently purchased items, and elevating them for display on a higher level in the structure than that on which they would normally appear (see at least Abstract, Figs. 1A-4, column 1 lines 5-15). Spiegel further discloses:

- storing items in a hierarchical structure: wherein each of the items is located using a database search query that returns a set of records containing the items based on a specified characteristic of the items for each level of the hierarchical structure (see at least Abstract, Figs. 1A-8, column 1 lines 25-59, column 5 line 10-column 6 line 5); dynamically generating a page based on the result of the query (see at least fig. 1A, column 2 lines 25-36, column 5 lines 3-10, column 7 lines 5-24, 59- column 8 line 8).
- identifying at least one high frequency item: wherein the at least one high frequency item is an item that is frequently purchased (see at least Abstract, Fig.



3, column 1 lines 7-13, column 1 line 60 – column 2 line 36, column 6 lines 5-20); maintaining a record of the frequency that each of the items has been purchased (see at least Abstract, column 2 lines 12-24, column 3 lines 13-29, column 6 lines 5-20, 30-39. Please note: this element is interpreted as referring to the storage of information regarding the frequency of purchase of each item.); a separate record of the frequency of purchase of each of the items is maintained for each of a plurality of groups of users (see at least column 7 line 59-column 8 line 7, column 9 line 64 – column 10 line 16.).

- automatically generating the query for each level of the hierarchical structure: to display the at least one high frequency item on a high level page (see at least Abstract, Figs. 1A,2-4,11; column 1 line 60 – column 2 line 4, column 2 lines 26-36, column 6 lines 5-20).
- presenting the item to an administrator: selecting at least one high frequency item for display on the high level page (see at least Abstract, Figs. 1A,2-4,11; column 1 line 60 – column 2 line 4, column 2 lines 26-36, column 6 lines 5-20).
- storing the operations performed by a user to select an item in the hierarchical structure: analyzing the stored operations, obtaining the query for each level based on the stored operations (see at least Abstract, Figs. 1-4,5,7,9,11; column 1 line 60 – column 2 line 4, column 2 lines 26-36, column 6 lines 5-20, column 9 line 64-column 10 line 26.).

- an identification system for identifying a user: (see at least column 2 line 46 – column 3 line 12, column 6 line 40 – column 7 line 5, column 11 lines 34-50, column 12 line 61 – column 13 line 7).

Pertaining to system claims 14-18

Rejection of system claims 14-18 is based on the same rationale as noted above.

Pertaining to computer program product claims 19-22

Rejection of computer program product claims 19-22 is based on the same rationale as noted above.

**Conclusion**

All claims are drawn to the same invention claimed in the application prior to the entry of the submission under 37 CFR 1.114 and could have been finally rejected on the grounds and art of record in the next Office action if they had been entered in the application prior to entry under 37 CFR 1.114. Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action after the filing of a request for continued examination and the submission under 37 CFR 1.114. See MPEP § 706.07(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any

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extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Adam Levine whose telephone number is 571.272.8122. The examiner can normally be reached on M-F, 8:30-5:00 Eastern.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jeffrey A. Smith can be reached on 571.272.6763. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Adam Levine  
Patent Examiner  
December 13, 2007

  
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